
DIVISION OF BANKING

217 ½ West Missouri, Pierre, SD 57501
605-773-3421

MEMORANDUM

NUMBER: 20-006

DATE: 06/12/09

TO: SOUTH DAKOTA MORTGAGE LICENSEES

FROM: BRET AFDAHL, Division Counsel and Trust Examiner

RE: NEW LEGISLATION

The following is a summary of House Bill 1060 (HB 1060) which was introduced by the Division to bring South Dakota's mortgage laws in SDCL chapter 54-14, into compliance with the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (SAFE Act). House Bill 1060 will become effective on July 1, 2009; however, with a few exceptions, most of the changes described below will not go into effect until 2010.

This memo is being sent only to mortgage lenders and mortgage brokers licensed in South Dakota. We ask that you pass this information along to your loan originators, processors, underwriters and other staff as necessary.

As current licensees, you should be focusing your time and efforts on successfully transitioning to the Nationwide Mortgage License System & Registry (NMLS&R). The Division will adopt new rules this fall and in 2010 to implement the key sections of HB 1060 and will provide notice to all mortgage licenses prior to any changes taking effect.

I would encourage you to review this bill in detail at your convenience at the following link: <http://legis.state.sd.us/sessions/2009/Bills/HB1060ENR.pdf>. Please pay particular attention to sections 1-4, and 7-9. If you would like additional information regarding this bill or if you have any questions you may contact the Division at 605-773-3421.

I will highlight the following sections and provide a brief explanation to draw your attention to key language in the bill and to identify the expected impact on you as a licensee.

New definitions are provided in Sections 1 through 5. The key definitions that you will want to become familiar with are in sections 2 and 3 which define "loan processor or underwriter" and "mortgage loan originator" respectively. Please also note that the definition of mortgage broker was changed to better interact with the new definition of mortgage loan originator. See section 1(9).

New minimum licensing standards, mandated by the SAFE Act, are contained in section 7 and include the following:

- No prior revocation of a mortgage loan originator license in any jurisdiction
- No felony convictions in the past 7 years and No felony conviction involving fraud, dishonesty, breach of trust, or money laundering at any time
- A demonstration of financial responsibility with consideration of certain factors which include; outstanding judgments, current tax liens, foreclosures or a pattern of seriously delinquent accounts within the past 3 years
- Pre-license education and written test
- Continuing education requirements prior to each renewal
- Maintain a bond at all times

The Division will continue to conduct criminal background investigations as it has been for the last two years and will adopt new rules later this year or early in 2010 to establish procedures for the review of the personal history and experience requirements contained in section 8.

Loan processors or underwriters that act as independent contractors must become licensed as mortgage loan originators as a result of HB 1060. See section 13. Loan processors or underwriters that are employees of a licensee in South Dakota are not required to have their own license if they are acting within the limitations established in section 2.

Certain nonprofit entities will be exempt from all of the requirements contained in HB 1060 and chapter 54-14. See section 24.

A previous exemption provided for insurance companies was revoked and such companies will now be subject to all of the requirements in chapter 54-14 if they are engaged in residential mortgage lending. If an insurance company is engaged in non-residential lending in South Dakota, they will be required to obtain a license and comply with certain licensing requirements. See section 27.

Please note that the requirements contained in section 7 and 9 will not impact you as a current licensee until the renewal period in December of 2010. As stated above, the Division will provide additional guidance to you as we implement new rules to bring everyone into compliance with the new requirements contained in HB 1060. Please continue to complete your continuing education obligations for 2009 as you have in previous years and check our website at the following address for updates: <http://www.state.sd.us/drr2/reg/bank/BANK-HOM.htm>.